

BILL ANALYSIS

C.S.S.B. 760
By: Springer
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law requires oil, gas, coal, and wind energy companies to pay to decommission and properly dispose of equipment that will no longer be used when the parts have worn out or the project has been completed. These requirements, which already applied to fossil fuel generators, were extended to wind companies during the 86th Legislative Session, but not to solar. Most solar equipment cannot be recycled, and solar panels can leach toxic chemicals into the environment. Nationwide, roughly eight million tons of solar panels will be sent to landfills by the end of the decade and approximately 80 million tons by 2050. Since Texas is in the top five solar-producing states, a large portion of this waste burden will fall on Texas. C.S.S.B. 760 seeks to correct this oversight and level the playing field by extending existing decommissioning requirements to solar energy to maintain a predictable regulatory climate and ensure waste is disposed of properly.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 760 amends the Utilities Code to require a solar power facility agreement to provide that the grantee, defined as a person other than an electric utility who leases property from a landowner and operates a solar power facility on the property, is responsible for removing the grantee's solar power facilities from the landowner's property. The bill defines, among other terms, "solar power facility" for purposes of its provisions. The bill requires the agreement to provide that the grantee is required, in accordance with any other applicable laws or regulations, to safely do the following:

- clear, clean, and remove from the property each solar energy device, transformer, and substation and each overhead power or communications line installed by the grantee on the property; and
- for each foundation of a solar energy device, transformer, or substation installed in the ground and for each buried cable installed in the ground:
 - clear, clean, and remove the foundation or cable from the ground to a depth of at least three feet below the surface grade of the land in which the foundation or cable is installed; and
 - ensure that each hole or cavity created in the ground by the removal is filled with soil of the same type or a similar type as the predominant soil found on the property.

C.S.S.B. 760 requires the agreement to provide that the grantee is required, at the request of the landowner, to clear, clean, and remove each road constructed by the grantee on the property and ensure that each hole or cavity created in the ground by that removal is filled with soil of the same type or a similar type as the predominant soil found on the property.

C.S.S.B. 760 requires the agreement to provide that, at the request of the landowner, if reasonable, the grantee is required to do the following:

- remove from the property all rocks over 12 inches in diameter excavated during the decommissioning or removal process;
- return the property to a tillable state using scarification, V-rip, or disc methods, as appropriate; and
- ensure the following:
 - that each hole or cavity created in the ground by the removal is filled with soil of the same type or a similar type as the predominant soil found on the property; and
 - that the surface is returned as near as reasonably possible to the same condition as before the grantee dug holes or cavities, including by reseeding pastureland with native grasses prescribed by an appropriate governmental agency, if any.

C.S.S.B. 760 requires the landowner to make a request for the removal of roads or for rock removal and the restoration of the surface to its previous condition not later than the 180th day after the later of the following:

- the date on which the solar power facility is no longer capable of generating electricity in commercial quantities; or
- the date the landowner receives from the grantee written notice of intent to decommission the solar power facility.

C.S.S.B. 760 requires a solar power facility agreement to provide that the grantee must obtain and deliver to the landowner evidence of sufficient financial assurance that conforms to the bill's requirements to secure the performance of the grantee's obligation to remove the grantee's solar power facilities located on the landowner's property. The bill sets out the acceptable forms and amount of financial assurance required and provides for additional agreement conditions, including the provider qualifications and deadlines for delivery of certain cost estimates and the deadlines for delivery of the financial assurance. The bill makes the grantee responsible for the costs of obtaining the financial assurance and costs of determining the estimated removal costs and salvage value.

C.S.S.B. 760 prohibits the grantee from canceling financial assurance before the date the grantee has completed the grantee's obligation to remove the solar power facilities located on the landowner's property, unless the grantee provides the landowner with replacement financial assurance at the time of or before the cancellation. In the event of a transfer of ownership of the grantee's solar power facilities, the financial security provided by the grantee must remain in place until the date evidence of sufficient financial security is provided to the landowner.

C.S.S.B. 760 applies only to a solar power facility that is a generation asset as defined by the Public Utility Regulatory Act. The bill establishes that a provision of a solar power facility agreement that purports to waive a right or exempt a grantee from a liability or duty established by the bill's provisions is void. A person who is harmed by a violation of those provisions is entitled to appropriate injunctive relief to prevent further violations. The bill's provisions are not exclusive, and any remedies provided by the bill are in addition to any other procedures or remedies provided by other law.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 760 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute replaces each reference of "topsoil" in the engrossed with "soil."

The engrossed specified certain acceptable forms of financial assurance, including another form of financial assurance acceptable to the owner. The substitute changes that general specification to another form of financial assurance reasonably acceptable to the landowner.

The substitute revises the details of deadlines for delivery of certain cost estimates and delivery of financial assurance as follows:

- the engrossed required an agreement to provide that the grantee must deliver certain cost estimates at least once every five years for the remainder of the term of the agreement, whereas the substitute requires the agreement to require the delivery of the estimates on or before the 10th anniversary of the commercial operations date of the solar power facilities and at least once every five years after that commercial operations date for the remainder of the term of the agreement; and
- the engrossed required the agreement to provide that the grantee must deliver certain financial assurance not later than the earlier of the date the solar power facility agreement is terminated or the 10th anniversary of the commercial operations date of the applicable solar power facilities, whereas the substitute retains the agreement termination date as one of the possible deadlines but changes the other date to the 20th anniversary of the commercial operations date.